

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

EXPLORER PIPELINE COMPANY,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, the United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under Section 311 of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, for assessment of civil penalties for the discharge of jet fuel into navigable waters of the United States from defendant’s common carrier refined petroleum products pipeline at a location near Huntsville, Walker County, Texas, on July 14, 2007. Defendant, Explorer Pipeline Company, spilled at least 6,568 barrels (275,856 gallons) of jet fuel when its pipeline ruptured on July 14, 2007. The jet fuel flowed into Turkey Creek and connected downstream waters.

JURISDICTION, AUTHORITY, AND VENUE

2. This Court has jurisdiction over this matter pursuant to Sections 311(b)(7)(E) and (n) of the CWA, 33 U.S.C. § 1321(b)(7)(E) and (n), and 28 U.S.C. §§ 1331, 1345, 1355.

3. Authority to bring this action is vested in the United States Department of Justice by, *inter alia*, Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Southern District of Texas under Section 311(b)(7)(E) of the CWA, 33 U.S.C. § 1321(b)(7)(E), and 28 U.S.C. §§ 1391 and 1395 because the claim arose in this district and defendant is located and doing business in this district.

DEFENDANT

5. Explorer Pipeline Company is a Delaware corporation with its headquarters in Tulsa, Oklahoma, and an office in Houston, Texas.

6. At all times relevant to this action, defendant owned and operated the Explorer pipeline from which jet fuel was discharged on July 14, 2007.

STATUTORY FRAMEWORK FOR CWA CLAIMS

Civil Penalties

7. Section 311(b) of the CWA prohibits the “discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States [and] adjoining shorelines . . . in such quantities as may be harmful,” 33 U.S.C. § 1321(b)(3), “to the public health or welfare or the environment of the United States,” 33 U.S.C. § 1321(b)(4). This prohibition supports the national objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

8. Section 311(b)(7)(A) of the CWA mandates that “[a]ny person who is the owner,

operator, or person in charge of any . . . onshore facility . . . from which oil . . . is discharged in violation of paragraph (3), shall be subject to a civil penalty . . .” 33 U.S.C. § 1321(b)(7)(A).

9. Pursuant to its authority under the CWA, EPA has promulgated regulations that define “harmful” quantities of oil to include quantities that “[c]ause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.” 40 C.F.R. § 110.3.

10. Section 311(b)(7)(A) of the CWA establishes the civil penalty for violations of Section 311(b)(3) as \$32,500 per day of violation or an amount up to \$1,100 per barrel discharged. 33 U.S.C. §1321(b)(7)(A); 40 C.F.R. § 19.4 (2006) (establishing, effective March 15, 2004, the civil penalty amounts under Section 311(b)(7) were increased to the listed amounts by the Civil Monetary Penalty Inflation Adjustment Rule).

11. The per barrel penalty is increased to an amount up to \$4,300 per barrel where the violation is the result of gross negligence or willful misconduct. 33 U.S.C. §1321(b)(7)(D); 40 C.F.R. § 19.4.

CAUSE OF ACTION

Civil Penalties for Violation of Section 311 of the Clean Water Act

12. Plaintiff incorporates by reference all allegations stated in paragraphs 1-11.

13. On July 14, 2007, at least 6,568 barrels of jet fuel discharged from defendant’s 28-inch diameter pipeline running through Huntsville, Texas. The pipeline ruptured and sprayed jet fuel onto a nearby home, onto the surrounding ground, and into nearby Turkey Creek.

14. The jet fuel flowed into Turkey Creek and continued to flow downstream approximately 4.5 miles to a point beyond the confluence of Turkey Creek and West Turkey

Creek. Turkey Creek flows into the Trinity River at the upper reaches of Lake Livingston.

15. Defendant is a “person” within the meaning of Sections 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7).

16. Defendant is the “owner” and “operator” of an onshore facility from which jet fuel was discharged within the meaning of Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

17. Defendant’s pipeline where the discharge occurred was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10).

18. The spilling of jet fuel constituted a “discharge” of oil within the meaning of Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2).

19. The discharge was of “oil” within the meaning of Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1).

20. The discharge was a discharge into or upon “navigable waters” and adjoining shorelines of the United States within the meaning of Sections 311 and 502(7) of the CWA, 33 U.S.C. §§ 1321, 1362(7).

21. The discharge was in a quantity “as may be harmful” within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), and 40 C.F.R. 110.3. The discharge caused a sheen on the water and staining on adjoining shorelines.

22. The discharge was a violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

23. As a result of defendant’s violation of Section 311(b)(3) of the CWA, Defendant is liable under Section 311(b)(7)(A) for a civil penalty of up to \$1,100 per barrel discharged, or, if it is established that the violations are the result of gross negligence or willful misconduct, a

penalty of up to \$4,300 per barrel discharged under Section 311(b)(7)(D).

REQUEST FOR RELIEF

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court:

A. Enter judgment against defendant and award the United States civil penalties in an amount up to \$1,100 per barrel of jet fuel discharged for the discharge alleged above, or if it is established that the discharge was the result of gross negligence or wilful misconduct, in an amount up to \$4,300 per barrel discharged;

B. Grant the United States such other relief as the Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA:

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